



6325-39

## OFFICE OF PERSONNEL MANAGEMENT

### Debarment, Suspension, and Ineligibility of Contractors

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is providing notice of its intent to adopt the policies and procedures contained in the Federal Acquisition Regulation (FAR) regarding the debarment, suspension, and ineligibility of government contractors. As an executive agency, OPM follows the FAR as appropriate and applicable. As OPM's procurement rules are not contained in the Code of Federal Regulations, these new rules will be contained in an internal OPM document referred to as "Contracting Policy No. 9.4: OPM Suspension and Debarment Program" (hereinafter, OPM's contracting policy). As such, the proposed policy regarding debarment and suspension will be added to OPM's contracting policies. However, persons or entities seeking Government contracts could potentially be adversely affected if, pursuant to the proposed policy, they were debarred, suspended, or proposed for debarment by OPM. As such, OPM is providing interested persons an opportunity for notice and comment on this proposed policy.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

OPM will publish the effective date of the proposed policy when responding to comments in a future notice.

**ADDRESSES:** Address all comments concerning this proposed policy to: U.S. Office of Personnel Management, Contracting; Attention: Contracting Policy, 1900 E Street NW, Washington, DC 20415; or email [patricia.broome@opm.gov](mailto:patricia.broome@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Broome, Director, Contracting Policy, 202-606-2952.

**SUPPLEMENTARY INFORMATION:**

OPM is required by law to seek comments before issuing a policy that has general applicability and legal effect. OPM invites interested persons to comment on this proposed policy by submitting written comments. OPM will consider all comments received on or before the closing date for comments and may change the proposed policy based on the comments received.

Under OPM's proposed policy, OPM will follow FAR Subpart 9.4. OPM's Contracting Policy 9.4 states that it is OPM's policy to follow the FAR, and OPM has long-maintained procedures, consistent with FAR Subpart 9.4, that ensure that it contracts only with those entities and individuals (hereinafter, contractors) who are responsible. To make clear that FAR Subpart 9.4 applies, OPM has developed its Contracting Policy to formally and explicitly adopt FAR Subpart 9.4.

Except as provided in FAR Subpart 9.4, OPM will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List System on the System for Award Management (SAM/EPLS), which is maintained by the

General Services Administration. Further, if OPM debars, proposes for debarment, or suspends a contractor, OPM will, consistent with FAR Subpart 9.4, list that contractor in the SAM/EPLS. Consistent with FAR 9.405-1, OPM may continue an existing contract with a contractor despite the fact that the contractor has subsequently been debarred, proposed for debarment, or suspended if it is determined in the best interest of the Government to do so.

Consistent with the definitions of “debarring official” and “suspending official” contained at FAR 9.403, the Director, as the head of OPM, will serve as the debarring official and suspending official (hereinafter, debarment/suspension official). The Director may designate another OPM official to serve as the debarment/suspension official. The Director or other designated Debarment Official will also be responsible for deciding whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

OPM's Contracting Policy Office (CPO), which is responsible for the majority of OPM's contracting activities, will be designated as the OPM unit with primary responsibility for investigating and referring potential debarment and suspension actions to the debarment/suspension official for his or her consideration. OPM's procurement activities are largely centralized in CPO, which is staffed by contracting officers and other acquisition professionals. As such, CPO staff has the required technical knowledge to handle debarment and suspension referrals and is in the best position to learn of matters that may warrant debarment and/or suspension. Moreover, CPO is the first point of contact for Office of Inspector General (OIG) personnel and Contracting Officer's Representatives, who have direct knowledge of any

problems with contractor conduct and/or performance. Thus, individuals—including OPM employees and members of the public—who believe that there may be grounds to debar or suspend a contractor should contact CPO and provide them with all relevant information. Whenever CPO learns of information that indicates there may be grounds for debarring or suspending a contractor, CPO will gather appropriate information and refer the matter to the debarment/suspension official if warranted. All such referrals will include a recommendation by the OPM Suspension and Debarment Committee (SDC) as to a proposed course of action. Likewise, CPO will have responsibility for recommending to the Director or other designated Debarment Official whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

Given its central role in OPM's procurement process, CPO, in consultation with OPM's Office of General Counsel, will also be responsible for establishing written procedures that address the key aspects of OPM's debarment/suspension program.

Accordingly, the OPM proposes to adopt the following policy and incorporate it into its contracting policies:

OPM will follow the policies and procedures contained at FAR Subpart 9.4—Debarment, Suspension, and Ineligibility. OPM will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List (SAM/EPLS), except as otherwise provided for in FAR Subpart 9.4. OPM will report to the SAM/EPLS any contractor OPM debars, suspends, or proposes for debarment. Such action will have Government-wide reciprocity. Notwithstanding the debarment, suspension, or proposed debarment of a contractor,

OPM may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment, unless the Director or other designated Debarment Official directs otherwise.

The Director or a designee will serve as the debarring official and suspending official (debarment/suspension official). The Director or designee will also decide (1) whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and (2) whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

CPO will have primary responsibility for investigating and submitting potential debarment/suspension actions to the SDC, which will have the responsibility for reviewing and referring actions to the debarment/suspension official for consideration. As such, any person who believes that there may be grounds to debar or suspend a person or entity from contracting with OPM should contact CPO and provide them with all relevant information.

CPO, in conjunction with the SDC, will also have responsibility for recommending to the Director or designee whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment. In consultation with the Office of General Counsel, CPO will establish and maintain written procedures for:

(1) The prompt reporting, investigation, and referral to the debarment/suspension official of matters appropriate for that official's consideration. All debarment/suspension referrals shall include a recommendation by the SDC as to a proposed course of action;

(2) The debarment decision-making process, which shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment;

(3) The suspension decision-making process, which shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through presentation, information and argument in opposition to the suspension;

(4) Recommending to the Director or designee whether or not to solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment; and

(5) Recommending to the Director or designee whether or not to continue current contracts with a contractor or subcontractor who is debarred, suspended, or proposed for debarment.

OPM's Office of General Counsel will review for legal sufficiency:

(1) Referrals by CPO and SDC to the debarment/suspension official;

(2) Recommendations by CPO to the Director or designee that OPM solicit offers from, award contracts to, or consent to subcontracts with a contractor who is listed in the SAM/EPLS as debarred, suspended, or proposed for debarment;

(3) Recommendations by CPO and SDC to the Director or designee to terminate a current contract because a contractor or subcontractor was subsequently debarred, suspended, or proposed for debarment; and

(4) Notices of proposed debarment, notices of suspension, or any other communication to a contractor regarding that contractor's potential or actual suspension or debarment.

U.S. Office of Personnel Management.

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John Berry,  
Director.